

REMARKS

Claims 24-30 and 38-59 are pending, with Claims 1-23, 31-37 and 60-69 canceled. A **Listing of Claims** with appropriate status identifier begins on page 2 of this communication.

By the present communication, Claims 24 and 56 has been amended without prejudice or disclaimer of any previously claimed subject matter. Support for the amendment to Claims 24 and 56 can be found, *inter alia*, throughout the specification and the claims as originally filed. No new matter is introduced by the amendment.

The present amendment is made solely to promote prosecution without prejudice or disclaimer of any previously claimed subject matter. With respect to all amendments and canceled claims, Applicants have not dedicated or abandoned any unclaimed subject matter and moreover, have not acquiesced to any rejections or objections made by the Patent Office. Applicants expressly reserve the right to pursue prosecution of any presently excluded subject matter or claim embodiments in one or more future continuation and/or divisional application(s).

Applicants respectfully submit that the amendment provided herewith place the application in condition for allowance, and that entry of the amendment is therefor proper (MPEP § 714.13). Accordingly, Applicants respectfully request reconsideration of the present application in view of the foregoing amendment and in view of the reasons that follow.

Rejection under 35 U.S.C. §112, second paragraph, indefiniteness: Claims 24-30 and 38-59.

Claims 24-30 and 38-59 stand rejected under 35 U.S.C. §112, second paragraph (Office Action, pp. 3-4), for alleged indefiniteness for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

While not agreeing with the Examiner's rejection, but solely to advance prosecution, Claim 24 is amended to recite "a peptide having the amino acid sequence ..." which amendment has been acknowledged by the Examiner (Office Action, page 4, line 5) as sufficient to overcome

the instant rejection. Accordingly, Applicants respectfully request entry of the amendment and reconsideration and withdrawal of the instant rejection.

Rejection under 35 U.S.C. §112, second paragraph, indefiniteness: Claims 24 and 56.

Claims 24 and 56 stand rejected under 35 U.S.C. §112, second paragraph (Office Action, pp. 4), for alleged indefiniteness for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

By the present communication, an inadvertent typographical error is corrected, which error was introduced in the amendment to Claims 24 and 56 made in the Response to Office Action dated October 9, 2007. Applicants submit that the typographical error, i.e., the inadvertent labeling of position 7 of SEQ ID NO:31 as "X" rather than "Y", would be immediately recognized by the skilled artisan in view of the specification (e.g., Substitute Specification submitted May 10, 2005, at e.g., page 16, line 28 to page 17, line 19), as would correction of the typographical error, i.e., requiring "Y" in position 7 of SEQ ID NO:31. Accordingly, Applicants respectfully request entry of the amendment and reconsideration and withdrawal of the instant rejection.

Rejection under judicially created doctrine of nonstatutory double patenting: Claims 24-30 and 38-59.

While disagreeing with the rejection of Claims 24-30 and 38-59 under 35 U.S.C. §112, second paragraph (Office Action, pp. 5-6) for alleged nonstatutory obviousness-type double patenting over U.S. 5,686,411 and U.S. 7,271,238, and solely in the interest of expediting prosecution, provided herewith are Terminal Disclaimers for the instant application and U.S. 5,686,411 and U.S. 7,271,238. Applicants further note that "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870 (Fed. Cir. 1991). Accordingly, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

CONCLUSION

Applicants believe that all issues raised in the Office Action have been properly addressed in this response. Accordingly, entry of the amendments provided herewith and reconsideration and allowance of the pending claims are respectfully requested. If the Examiner believes that a telephone interview would serve to facilitate resolution of any outstanding issues, the Examiner is encouraged to contact Applicants' representative at the telephone number below.

No additional fees beyond the statutory fee for two Terminal Disclaimers are believed due for this submission. However, if an additional fee is due, the Commissioner is hereby authorized to charge payment of any fees associated with this communication, to Applicant's Deposit Account No. 010535 referencing Docket No. 254/057CON. Additionally, the Commissioner is hereby authorized to charge payment or credit overpayment of any fees during the pendency of this application to Applicant's Deposit Account No. 010535.

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Respectfully submitted,

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